

HOUSE BILL 210

By Brooks H

AN ACT to amend Tennessee Code Annotated, Title 49,  
Chapter 1, relative to the "Tennessee Choice and  
Opportunity Scholarship Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 1, is amended by adding  
the following language as a new part:

**49-1-1201.**

This part shall be known and may be cited as the "Tennessee Choice and  
Opportunity Scholarship Act."

**49-1-1202.**

As used in this part, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of education;
- (2) "Department" means the department of education;
- (3) "Eligible student" means a student who:

(A) Resides in this state and is zoned to attend or enrolled in a  
public school that, at the time of the student's initial application for a  
scholarship, is identified as being in the bottom five percent (5%) of  
schools in overall achievement as determined by the performance  
standards and other criteria set by the state board;

(B) Meets the minimum age requirements specified in § 49-6-  
3001, with eligibility extending until the student graduates from high  
school; however, the student must be less than twenty-two (22) years of  
age by August 15 of each year;

(C) Is a member of a household whose annual income during the year prior to initial receipt of a scholarship met the requirements for free or reduced price lunch under 42 U.S.C. § 1751 et seq.; and

(D) Was enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives a scholarship under this part, is enrolling in a Tennessee school for the first time, or received a scholarship pursuant to this part in the previous school year;

(4) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child under § 49-6-3001;

(5) "Participating school" means a nonpublic school that meets the requirements established in this part and seeks to enroll eligible students;

(6) "Program" means the Tennessee Choice and Opportunity Scholarship Program;

(7) "Scholarship" means the funds awarded to a parent on behalf of an eligible student pursuant to this part;

(8) "Scholarship student" means an eligible student who is awarded a scholarship pursuant to this part;

(9) "State board" means the state board of education; and

(10) "Tuition and fees" means the cost of educating an enrolled student, inclusive of any cost required as a condition of attending the participating school. "Tuition and fees" also includes operational and capital facility costs and transportation costs.

**49-1-1203.**

(a) A participating school shall:

(1) Voluntarily agree to participate in the program and enroll eligible students pursuant to this part;

(2) Provide notice, on an annual basis, of intent to participate in the program to the department through completion of an application developed by the department. Such notice shall include the number of available seats by grade level;

(3) Be identified as a category I, II, or III school pursuant to department procedures and state board rules and regulations and comply with all health and safety laws or codes that are applicable to such schools;

(4) Annually administer to scholarship students state assessments as provided in part 6 of this chapter, or nationally recognized norm-referenced tests, approved by the state board, that measure educational progress in grades that require testing under the state's accountability system for public schools;

(5) Provide the parents of scholarship students the results of their individual student's annual assessments;

(6) In addition to the information derived from the requirements of subdivision (a)(4), provide the department with graduation rates of scholarship students as well as other student information allowing for the aggregation of data as determined and required by the department;

(7) Comply with nondiscrimination policies pursuant to 42 U.S.C. § 1981 and otherwise abide by the school's written admission policy with regard to students who are awarded scholarships under this part. If a scholarship student is not successfully enrolled in a school, the student shall remain eligible to enroll in another participating school;

(8) Not discriminate against students with special education needs who meet the requirements for admission to the school during the enrollment admissions process; however, as a nonpublic school, a participating school is

required to offer only those services it already provides to assist students with special needs in its normal course of operations. If a scholarship student was entitled to receive special education services in the public school the student previously attended, the parent shall acknowledge in writing, as part of the enrollment process, that the parent agrees to accept only services that have been identified as available to the student in the nonpublic school. A participating school may partner with an LEA to provide special education services;

(9) Accept the scholarship amount as set forth in this part as payment in full for the cost of tuition and fees that would otherwise be charged by the school;

(10) Allow scholarship students to remain enrolled in the school for the duration of the school year at no additional cost if the school withdraws from the program during the school year;

(11) Submit to the department a financial audit of the school conducted by a certified public accountant; however, the audit may be limited in scope to records necessary for the department to make scholarship payments to the school. The audit shall include a statement that the audit is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the department to be expended in a manner inconsistent with this part shall be returned to the state;

(12) Demonstrate financial viability to repay any funds that may be owed to the state by filing with the department, prior to the start of the school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships expected to be paid during the school year. The school may comply with this requirement by filing a bond

payable to the state from a surety, and in an amount determined by the department;

(13) Require any person applying for a position as a teacher or any other position requiring close proximity to children to submit to a criminal background check;

(14) Provide lunch to scholarship students at no cost or at a reduced cost pursuant to the same income qualifications established under the National School Lunch Program, created in the Richard B. Russell National School Lunch Act (42 U.S.C. §§ 1751–1769j); and

(15) Comply with § 49-5-202.

(b) Participation in the program by a school is voluntary, and nothing in this part shall be construed to authorize any additional regulation of participating schools beyond that specifically authorized by this part. A school participating in the program shall not be considered a state actor or agent of the state or federal government by virtue of its participation in this program.

(c) The amount of a scholarship awarded to a scholarship student shall not be treated as income or an asset for the purposes of any tax or qualification for any other federal or state grant or program.

**49-1-1204.**

(a) The department shall develop procedures necessary for administering the program. In administering the program, the department shall:

(1) Provide notice to parents of student eligibility and participating schools;

(2) Accept applications from parents of eligible students and award scholarships to eligible students. Each application shall indicate the parent's choice or choices of participating schools;

(3) Determine and approve school and student eligibility and participation pursuant to this part. If the number of eligible students who submit applications exceeds the permissible number of scholarships available statewide or the available seats at participating schools for any grade level, the department shall conduct a random selection process to award scholarships that provides each eligible student with an equal opportunity for selection. The department shall give preference to students already enrolled in the participating school and to siblings of such students;

(4) Create a standard application that parents and students interested in the program shall submit to establish eligibility and apply for admission to participating schools; however, nothing shall prohibit participating schools from requiring supplemental information from applicants;

(5) Establish application and participation timelines that will maximize student and school participation;

(6) Remit scholarship payments to participating schools on behalf of scholarship students; however, any scholarship awarded under this part shall be the entitlement of the eligible student under the supervision of the student's parent and shall not be construed to be the entitlement of any participating school; and

(7) Annually publish, in compliance with all state and federal student privacy laws, as well as applicable department and state board procedures or

rules, student achievement and progress information, for each participating school, which shall include:

(A) Achievement results in the aggregate, including educational progress, for scholarship students;

(B) The graduation rate for scholarship students; and

(C) The retention rate for scholarship students.

(b) The department may suspend or terminate a school's participation in the program if the department determines the school has failed to comply with this part. If the department suspends or terminates the school's participation, the department shall notify affected scholarship students and their parents of the decision. If a participating school is suspended or terminated from the program, or if the school otherwise withdraws from the program, scholarship students enrolled at the school may transfer to another participating school without loss of scholarship eligibility, and such students shall be given preference for enrollment.

(c) Notwithstanding subsection (b), an eligible student is entitled to one (1) scholarship per school year. If a student voluntarily leaves a participating school for reasons other than suspension or termination of the school's participation in the program by the department, and enrolls in another participating school, neither the student nor the successor participating school shall receive any funds under this part for the payment of tuition and fees for the remainder of the school year. However, if the student enrolls in the LEA in which the student resides and is zoned to attend, the LEA shall receive the funds that otherwise would have been remitted to a participating school on behalf of the scholarship student.

(d) In compliance with all state and federal student privacy laws, an LEA shall provide a participating school that has admitted an eligible student under this part with a complete copy of the student's school records in the possession of the LEA.

(e) The names or any other information that alone, or in combination, could personally identify specific scholarship recipients shall be treated as confidential and shall not be open to the public. Nothing in this part shall be construed to prevent the department, state board, or participating schools from accessing and utilizing such records as required to fulfill their lawful functions.

**49-1-1205.**

(a) After initial approval by the department as a participating school, a school may continue to enroll additional eligible students through the program; provided, that the school demonstrates achievement growth for scholarship students, in the aggregate, at a minimum level of "at expectations," as represented by a value-added assessment system developed pursuant to part 6 of this chapter or through guidelines adopted by the state board pursuant to part 3 of this chapter.

(b) If a participating school demonstrates achievement growth for scholarship students, in the aggregate, at a level of "significantly below expectations" for two (2) consecutive years, as represented by a value-added assessment system developed pursuant to part 6 of this chapter or through guidelines adopted by the state board pursuant to part 3 of this chapter, the commissioner shall have the authority to suspend or terminate a school's participation in the program. If the department suspends or terminates the school's participation, the department shall notify affected scholarship students and their parents of the decision. If a participating school is suspended or terminated from the program pursuant to this subsection (b), scholarship students



enrolled at the school may transfer to another participating school without loss of eligibility, and such students shall be given preference for enrollment.

**49-1-1206.**

(a) The annual amount to which an eligible student is entitled under this part shall be equal to the lesser of the following:

(1) The cost of tuition and fees that would otherwise be charged by the school; or

(2) The amount representing the per pupil state and local funds generated and required through the basic education program (BEP) for the LEA in which the student resides and is zoned to attend.

(b) For the purposes of funding calculations, each scholarship recipient shall be counted in the enrollment figures for the LEA in which the student resides and is zoned to attend. The scholarship funds shall be subtracted from the total state funds otherwise payable to the LEA and shall be paid directly to the participating school.

(c) If the participating school's cost of tuition and fees is less than the amount outlined in subdivision (a)(2), the remaining funds shall be retained by the department and the LEA in which the scholarship recipient resides, with specific amounts based on the LEA's state and local funding share under the BEP.

(d) The department shall develop a schedule for payments of scholarship funds to participating schools. If a participating student is enrolled in a participating school for less than the entire school year, the scholarship provided under this part shall be reduced on a prorated basis to reflect the shorter school term. If an eligible student subsequently enrolls in another participating school during the school year, the remaining allocation shall be paid directly to that participating school.

**49-1-1207.**

(a) The total number of scholarships awarded statewide under this part shall be limited as follows:

(1) For the 2015-2016 school year, the department shall award no more than five thousand (5,000) scholarships;

(2) For the 2016-2017 school year, the department shall award no more than seven thousand five hundred (7,500) scholarships;

(3) For the 2017-2018 school year, the department shall award no more than ten thousand (10,000) scholarships; and

(4) For the 2018-2019 school year and thereafter, the department shall award no more than twenty thousand (20,000) scholarships.

(b) The department shall develop procedures to allocate scholarships among participating schools if the number of available seats exceeds the limitations set forth in subsection (a).

**49-1-1208.**

(a) To address circumstances where the number of eligible students applying for scholarships at a particular participating school in a particular grade exceeds the number of scholarships awarded, the department shall inform parents of eligible students of all available scholarship options and provide an opportunity for parents to apply to other participating schools.

(b) In any school year, if, after all possible matches of eligible students with participating schools have been made, the number of scholarships awarded does not meet the number of scholarships available under this part, the remaining scholarships shall be awarded to students who reside in an LEA that contains at least one (1) school in the bottom five percent (5%) of schools in overall achievement as determined by the

performance standards and other criteria set by the state board and who otherwise meet all other eligibility requirements as set forth in § 49-1-1202(3).

**49-1-1209.**

(a) Subject to the requirements of subsection (b), an LEA may adopt qualifications for student eligibility for a scholarship that do not require the student to be:

(1) A member of a household whose total annual income meets the requirements of § 49-1-1202(3)(C); and

(2) Zoned to attend or enrolled in a public school that meets the requirements of § 49-1-1202(3)(A).

(b)

(1) A county board of education may adopt local qualifications for a scholarship under subsection (a), if the county board of education by a majority vote adopts the local qualifications and, subsequently, the county legislative body adopts the local qualifications by a majority vote.

(2) A city board of education may adopt local qualifications for a scholarship under subsection (a), if the city board of education by a majority vote adopts the local qualifications and, subsequently, the city legislative body adopts the local qualifications by a majority vote.

(3) A special school district board of education may adopt local qualifications for a scholarship under subsection (a) by a majority vote of the board of education.

(c) Notwithstanding § 49-1-1206(a), the scholarship amount shall be ninety percent (90%) of the per pupil state funds generated and required through the basic education program (BEP) for the LEA.

(d) If the local board adopts local qualifications for a scholarship under subsection (a), then, notwithstanding § 49-1-1203(a)(9), a participating school may require a scholarship student to pay tuition and fees in addition to the scholarship amount. The additional tuition and fees shall not exceed the difference between the participating school's full cost of tuition and fees and the scholarship amount.

(e) If a local board of education adopts local qualifications for a scholarship under subsection (a), then the scholarships awarded to students in the LEA shall not be counted in determining the number of scholarships to be awarded under § 49-1-1207(a).

SECTION 2. The state board is authorized to promulgate rules to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, title 4, chapter 5.

SECTION 3. If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.